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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUSSELL BRADBERRY, individually and
on behalf of a class of similarly
situated individuals,

No. C 06-6567 CW

Plaintiff,

v.

T-MOBILE USA, INC., a Delaware
corporation,

Defendant.

RUSSELL BRADBERRY, individually and
on behalf of a class of similarly
situated individuals,

No. C 07-5298 CW

Plaintiff,

v.

MBLOX, INC., a Delaware corporation,

ORDER DENYING
WITHOUT PREJUDICE
MBLOX'S MOTION FOR
CONSOLIDATION

Defendant.

Defendant in Case No. 07-5298, mBlox, Inc., moves to
consolidate that case with related Case No. 06-6567.¹ Plaintiff

¹mBlox actually moves for "joinder" of the two cases and, in
the alternative, for consolidation. However, permissive joinder,
which is governed by Rule 20(a) of the Federal Rules of Civil
Procedure, refers to the right of a plaintiff to name persons as
defendants. It is inapposite to the procedural context of mBlox's
motion.

1 Russell Bradberry opposes mBlox's motion, arguing that his case
2 against T-Mobile has advanced considerably further than the mBlox
3 action, which was only removed to federal court recently. The
4 parties in the T-Mobile case are also undertaking settlement
5 discussions, and have stipulated to stay all court proceedings for
6 a period of seventy-five days.

7 Rule 42(a) of the Federal Rules of Civil Procedure provides:

8 When actions involving a common question of law or fact
9 are pending before the court, it may order a joint
10 hearing or trial of any or all the matters in issue in
the actions; it may order all the actions consolidated;
and it may make such orders concerning proceedings
therein as may tend to avoid unnecessary costs or delays.

11 A district court may exercise "broad discretion" when deciding
12 whether to consolidate two actions. In re Adams Apple, Inc., 829
13 F.2d 1484, 1487 (9th Cir. 1987).

14 The two cases here indisputably involve common questions of
15 law and fact. However, the T-Mobile case has been stayed while the
16 parties attempt to reach a negotiated settlement of Plaintiff's
17 claims. Thus, consolidating the cases at this time would not be in
18 the interest of judicial economy. Nonetheless, if the T-Mobile
19 case does not settle, the Court may order consolidation or a joint
20 trial. In any event, coordination of the pretrial aspects of the
21 two cases will be desirable.

22 For these reasons, mBlox's motion to consolidate (Docket No.
23 94 in Case No. 06-6567; Docket No. 6 in Case No. 07-5298) is DENIED
24 without prejudice to refiling pending the outcome of the settlement
25 negotiations currently underway in Case No. 06-6567. Pretrial
26 preparation in Case No. 07-5298 shall proceed as planned, and all
27

1 parties in both cases shall appear for a joint case management
2 conference on February 19, 2008 at 2:00 p.m. This conference will
3 serve as the initial case management conference in Case No. 06-
4 6567; all other deadlines in the Court's Order Setting Initial Case
5 Management Conference and ADR Deadlines are adjusted to correspond
6 to the new conference date of February 19.

7 IT IS SO ORDERED.
8

9 Dated: 12/6/07
10

CLAUDIA WILKEN
United States District Judge